Supreme Court, U.S.
FILED

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(1)

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

JOSEPH MOHAMED SR. AND SHIRLEY MOHAMED,

Petitioners

vs

UNITED STATES OF AMERICA

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether an attorney's acts on behalf of a Debtor in Possession in a Chapter 11 Bankruptcy are acts of a Federal Employee within the meaning of the Federal Tort Claims Act (hereinafter **FTCA**).

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OPINIONS AND ORDERS BELOW

1. MEMORANDUM OF OPINION FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT filed November 27, 1998. **(Exhibit A of the Appendix hereto)**.

2. JUDGMENT AFFIRMING DISTRICT COURT DECISION entered November 27, 1998. **(Exhibit B of the Appendix hereto)**.

3. The OPINION of the Honorable David F. Levi, Judge of the United States District Court for the Eastern District of California, filed February 7, 1997 in Case No.CIV-S-96-1623-DFL-PAN. **(Exhibit C of the Appendix hereto)**.

4. Judgment in Civil Case, Case No. CIV-S-96-1693-DFL-PAN entered February 7, 1997. **(Exhibit D of the Appendix hereto)**.

5. ORDER denying Appellate Petition for Rehearing dated January 19, 1999. **(Exhibit E of the Appendix hereto)**.

JURISDICTION

The Memorandum of Opinion of the United States Court of Appeals for the NINTH CIRCUIT was filed on November 27, 1998. **(Exhibit A of the Appendix hereto)**.

Judgment Affirming District Court Decision, entered November 27, 1998. **(Exhibit B of Appendix hereto)**.

Appellants' Petition for Rehearing was denied on January 19, 1999. **(Exhibit E of the Appendix hereto)**.

The jurisdiction of the United States Supreme Court to review the decision of the Court of Appeals is under 28 United States Code, Section 1254(1).

STATUTES INVOLVED

The statutes involved in this case are:

A. The Federal Tort Claims Act, 28, USC, Section 1346(b):

> "Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

The full text of the Federal Tort Claims Act (FTCA) is set forth in **Exhibit F of the Appendix hereto**.

B. 28 U.S.C., Section 2671 which reads:

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

'Employee of the government' includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the services of the United States, whether with or without compensation.

'Acting within the scope of his office or employment', in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty."

C. Bankruptcy Code 11 USC, Section 105 **(Exhibit G of the Appendix hereto)**.

STATEMENT OF THE CASE

Petitioners were Secured Creditors in a Chapter 11 Bankruptcy. Their security was in the form of deeds of trust encumbering real property. The court ordered the security property sold and the proceeds placed in a trust account established by the attorney for the Debtor in Possession from which no funds were to be disbursed without further order of the Court. The attorney for the Debtor in Possession, Wayne Harbarger (hereinafter "**Harbarger**") embezzled the funds. **(Exhibit A of the Appendix hereto page 2)**.

Petitioners brought an action against the United States under the Federal Tort Claims Act. The Federal District Court dismissed the complaint for lack of subject matter jurisdiction on the ground that the attorney for the Debtor in Possession was not an employee of the Federal Government. **(Exhibit C of the Appendix hereto)**.

The Federal District Court had jurisdiction in this matter under the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 1346(b).

ARGUMENT

The Decision Below Involves An Important Point of Law

The court below has decided that, although the judiciary is covered by the Federal Tort Claims Act, a court

may put a creditor's property in the hands of a thief and create no government responsibility if the thief does what thieves do. This decision is contrary to the obvious intent of the Federal Tort Claims Act which is to provide a remedy to persons unable to protect themselves from the malfeasance of Government Agents

Bankruptcy Courts have both the duty and the power to control and administer all of the assets of a debtor from the time a bankruptcy is filed until final distribution of the assets. Bankruptcy Code, 11 USC, Section 105.

Obviously the court cannot personally perform all of the functions necessary to discharge this responsibility and must therefore rely upon trustees in Chapter 7 cases and Debtors in Possession in Chapter 11 cases. These appointees act as representatives of the estate on behalf of the court administering billions of dollars in assets every year.

Much of this property is subject to an interest of creditors who have it taken from their control by the court and are totally unable to protect themselves from the malfeasance of designated custodians. The issue of liability for losses that occur when these court designees wrongfully dispose of assets is thus one of wide applicability and enormous economic impact. It most surely qualifies as an important point of law within the meaning of Rule 10 of the Supreme Court Rules.

The Appellate Court Decision Conflicts with Other U.S. Court of Appeals' Decisions

Petitioners contend that:

(1) The FTCA covers employees of the judicial branch, allowing suit against the United States for the improper acts of its judicial employees.

(2) The acts of **Harbarger** were those of his principal, the Debtor in Possession, whose every function was subject to the power of the court to control.

In the instant case, the Appellate Court acknowledged the applicability of the FTCA to the judiciary stating that "The FTCA covers employees of the judicial branch". **(Exhibit A, page 3a, line 24)**. This is a correct statement of the law. 28 U.S.C., Section 2671, *supra*. Other courts are in accord.

> "...We have carefully reviewed each of the Plaintiffs' other arguments and have found them unconvincing. We hold that the Judicial Branch is covered by the Federal Tort Claims Act.
> *United States v.Le Patourel* 57 F2d 405 410 (1978).

The Court in *United States v.Le Patourel* carefully analyzed the history of the FTCA and concluded that the failure to exclude the judiciary was a conscious congressional choice. *Ibid* at 409.

The only exception to the coverage; as to the judiciary, would be acts to which judicial immunity attached. *Ibid* at 410.

Petitioner does not contend that any decision of the court gives rise to liability under the FTCA. The act of

stealing money is not an act to which judicial immunity would even arguably apply. Therefore, if **Harbarger** was the agent of the judiciary and committed an act for which his principal would be vicariously liable, the act would certainly be covered.

In regard to the issue of whether **Harbarger's** acts were acts covered by the FTCA the Court below further agreed with Petitioners that the dispositive issue was "the power of the Federal Government to control the detailed performance of the individual". **(Exhibit A, page 4a , line 8 to line 10)**.

The Appellate Court does not further discuss the issue but nevertheless concludes that the attorney's acts were not covered by the FTCA.

The Appellate Court's conclusion conflicts with two other United States Appeals Court decisions.

> "The Debtor in Possession like a trustee is an officer of the court *subject to the bankruptcy court's complete power to control. Power Pak Products Inc. . vs. Royal Globe Ins.Co.* 433, F.Supp. 684, 687 (W.D.N.Y.1977) *Emphasis Added.*

The *Power Pak* Court further states:

> "The Debtor in Possession has no power except such as the court may allow. *Ibid.*

The court below appears to base its departure

from *Power Pak Products Inc. v. Royal Globe Ins. Co.* on the fact that the court could not control **Harbarger's** day-to-day practice of law. This fact, although true, is an improper basis for holding that **Harbarger's** acts were not covered when he was performing his function as attorney for the Debtor in Possession. In this respect the Appellate Court decision is in conflict with cases holding that the functions of the attorney for the Debtor in Possession are entirely separate from other functions the same attorney may perform and which are not subject to control of the court. *Cle-Ware Industries v. Sokolsky* 493 F2d 863 (6th Cir.) Court denied 419 U.S.829, 95 S.Ct. 50, 412 L.Ed 2d 53 (1974).

> "... unless there is a receiver or trustee, the debtor automatically becomes a debtor in possession. The debtor and debtor in possession are treated as separate and distinct entities." *Ibid.* at 870.

> "Thus the attorney retained to file the petition usually acts in two capacities, concurrently representing the debtor in effecting an arrangement and the debtor in possession *in the exercise of the powers of a bankruptcy trustee* and in all things in connection with the conduct of the business." *Ibid., emphasis added.*

> "But the debtor does not cease to exist as such when he files his petition for arrangement and spontaneously becomes a debtor in possession. The two entities exist side by side until the conclusion of the proceeding." *Ibid.*

In the instant case, there can be no dispute that **Harbarger** was entrusted with the subject funds, while acting in his capacity as the attorney for the debtor in possession. It is also beyond dispute that the Federal Court was empowered to control **Harbarger** while acting in such capacity.

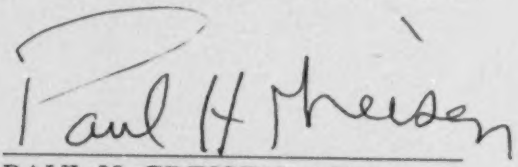
If the above analysis is correct the court should hear this case to resolve the conflict between U.S. Appeals Court decisions on an important point of law.

Even if the court disagrees with the above analysis the court should nevertheless hear the case as the important issue raised in this case has not been directly addressed by any court.

CONCLUSION

The court should grant this Petition to resolve an important point of law with wide applicability.

Dated: March 3, 1999 GREISEN LAW CORPORATION



PAUL H. GREISEN, ATTY.
FOR PETITIONERS, JOSEPH
MOHAMED, SR. AND
SHIRLEY MOHAMED

APPENDIX

EXHIBIT A --- MEMORANDUM OF OPINION FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOVEMBER 27, 1998

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH MOHAMED, SR.
AND SHIRLEY MOHAMED, No. 97-15358

Plaintiffs-Appellants D.C.No.CIV-S-96-1623-DFL

vs

MEMORANDUM[1]

UNITED STATES OF AMERICA

Defendant-Appellee

_____/

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

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[1]This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

Exhibit A

Argued and Submitted March 10, 1998
San Francisco, California

Before: WOOD, JR.,[2] HALL, and O'SCANNLAIN, Circuit Judges.

Joseph Mohamed, Sr. and Shirley Mohamed were secured creditors of a Chapter 11 bankruptcy estate. The Mohameds' security interest was in the form of deeds of trust encumbering certain real property. Wayne Harbarger served as the attorney for the debtor in possession. Upon Harbarger's motion, and over objection by the Mohameds, the bankruptcy court ordered that the encumbered property be sold free of any liens and that the proceeds from the sale be paid over to Harbarger, who was instructed to place these funds in a trust account and not to remove them without order of the court.

Instead of following the court's instructions, Harbarger embezzled more than $400,000 from the bankruptcy estate. As a result, the Mohameds' claim against the estate could not be paid. In an attempt to recover their losses, the Mohameds filed suit against the United States under the Federal Torts Claim Act ("FTCA"), 28 U.S.C. Section 1346(b), alleging that Harbarger was an agent or officer of the bankruptcy court for purposes of the Act and

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[2] The Honorable Harlington Wood, Jr., United States Circuit Judge for the Seventh Circuit, sitting by designation.

that, therefore, the United States was liable for his tortious conduct. The district court dismissed the Mohameds' complaint for lack of subject matter jurisdiction, stating that Harbarger was not an employee of the federal government and that, therefore, his tort was not covered under the FTCA. The Mohameds appeal. We review the district court's dismissal for lack of subject matter jurisdiction de novo. Evans v. Chater, 110 F.3d 1480, 1481 (9th Cir. 1997).

The FTCA is a limited waiver of sovereign immunity which allows the United States to be sued for damages "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. Section 1346(b); United States v. Orleans, 425 U.S. 807, 813 (1976). Under the FTCA, an "employee of the government" is defined to include:

> officers and employees of any federal agency ... and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

28 U.S.C. Section 2671. The FTCA covers employees of the judicial branch; however, it does not extend to the acts of independent contractors. **Id**. Under the FTCA, the plaintiff has the burden of showing an unequivocal waiver of immunity. Mitchell v. United States, 787 F.2d 466, 467 (9th Cir. 1986).

Exhibit A

In order to succeed on appeal, the Mohameds must show that the attorney for the debtor in possession qualifies as an employee of the government as that term is used in the FTCA. The critical factor in determining whether an individual is a federal employee rather than an independent contractor is "the power of the Federal Government to control the detailed physical performance of the individual." Orleans, 425 U.S. at 814 (quoting Logue v. United States, 412 U.S. 521, 528 (1973)) (internal quotation marks omitted). The analysis is not whether the party in question "receives federal money and must comply with federal standards and regulations, but whether its day-to-day operations are supervised by the Federal Government." **Id**. at 815.

The bankruptcy court had no control over Harbarger's private general law practice. Nevertheless, appellants, citing Power-Pak Products, Inc. v. Royal-Globe Insurance Co.. 433 F.Supp 684, 687 (W.D.N.Y. 1977), argue that Harbarger should be considered a government employee under the FTCA because the court had the "complete power to control" him in his capacity as attorney for the debtor in possession, the function that caused their injury. In addition to this general power to control, the Mohameds point to three specific examples of actual control by the bankruptcy court. First, the court, upon Harbarger's motion, ordered the sale of the property and conducted the sale in its courtroom. Second, the court ordered Harbarger to place the proceeds from the sale into a trust account. Finally, Harbarger was required to seek court approval before withdrawing money from the trust account for any purpose whatsoever.

Exhibit A

The Mohameds have succeeded in showing only that an attorney for the debtor in possession is bound to follow bankruptcy court orders. This does not constitute evidence of day-to-day supervision by the government as required for liability to attach under the FTCA. All attorneys, in fact, all parties, appearing in bankruptcy court are subject to the court's supervision and control on various issues. However, this supervision does not rise to a level sufficient to qualify these individuals as employees of the government for FTCA purposes. Furthermore, as the district court noted, while attorneys function as "officers of the court" in order to ensure the integrity and efficacy of the justice system, they are not officers in the sense in which that term is used in the FTCA.

The Mohameds have failed to meet their burden of showing that Harbarger qualifies as a federal employee under the FTCA. The decision of the district court is AFFIRMED.

The Motion of the government for attorney's fees for this appeal pursuant to FRAP 38 is DENIED.

EXHIBIT B ---- JUDGMENT AFFIRMING DISTRICT COURT OPINION FILED AND ENTERED NOVEMBER 27, 1998

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 97-15358
CT/AG#: CV-96-01623-DFL

JOSEPH MOHAMED, SR.;
SHIRLEY MOHAMED

PLAINTIFFS

v.

UNITED STATES OF AMERICA

DEFENDANT-APPELLEE

APPEAL FROM the United States District Court for the Eastern District of California (Sacramento).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California (Sacramento) and was duly submitted.

Exhibit B

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered November 27, 1998

EXHIBIT C ---- OPINION AND ORDER OF HON. DAVID F. LEVI, JUDGE OF THE U.S. DISTRICT COURT, FILED FEBRUARY 7, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH MOHAMED, SR.
AND SHIRLEY MOHAMED,

PLAINTIFFS

vs

UNITED STATES OF AMERICA,

DEFENDANT

/

CIV-S-96-1623 DFL PAN

MEMORANDUM OF OPINION AND ORDER

Defendant United States moves to dismiss plaintiffs', Joseph and Shirley Mohamed's claim under the Federal Tort Claims Act (hereinafter "FTCA").[1] The Mohameds' are creditors of the John and Claire Mattos Chapter 11 bankruptcy estate. The attorney representing the Mattoses in their bankruptcy proceedings was Wayne Harbarger. Harbarger embezzled more than $400,000 from

[1] Because oral argument would not be of material assistance the court orders this matter submitted on the briefs. E.D. Cal. Local Rule230(h).

the Mattos estate, and as a result, the Mohameds' claim against the estate could not be paid. The Mohameds filed this suit against the United States claiming that Harbarger was acting as an officer or agent of the bankruptcy court, which is a federal entity.

The FTCA is a limited waiver of the United States government's sovereign immunity. United States v. Orlens, 425 U.S. 807, 813 (1976), The FTCA permits the United States to be sued:

> for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.

28 U.S.C. Section 1346(b).

An "employee of the Government" is defined to include only:

> officers and employees of any federal agency ... and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

28 U.S.C. Section 2671.

The Mohameds argue that Harbarger was an officer or agent of the bankruptcy court because he was subject to the court's direction in his handling of the Mattos'

estate funds. But this supervisory power of the court is insufficient to bring an attorney, who represents an estate, within the category of those who act as an officer of a federal agency or "on behalf of a federal agency ... in the services of the United States . . . ." See Cromelin v. United States, 177 F. 2d 275, 277 (5th Cir. 1949), superseded by statute on other grounds (finding that a bankruptcy trustee is not an employee of the United States); Wells v. United States, 98 B.R. 806, 809 (N.D. 111. 1989).

Attorneys are often subject to court supervision through scheduling orders, stipulations, consent decrees, settlements, and the like. Such supervision does not convert the attorney into an agent of the court or as one who acts on behalf of or in the service of the court. The attorney acts at all times on behalf of the client whatever the degree of court supervision. Similarly, although attorneys share with the court the responsibility for the integrity and efficacy of the justice system and in this sense are "officers of the court," they are not officers or employees of the court in the sense in which those terms are used in 28 U.S.C. Section 2671. Attorneys have no authority to bind or represent the court. Because attorneys do not act "on behalf" of the courts or in the "service of the United States" when they prepare, execute, or disobey bankruptcy court orders, and because private attorneys are not agents of the court, the United States cannot be liable under the FTCA for Harbarger's wrongdoing.

For the foregoing reasons, the United States motion to dismiss is GRANTED.

Exhibit C

IT IS SO ORDERED.

Dated: 6 February 1997

/s/ David F. Levi
DAVID F. LEVI
United States District Judge

EXHIBIT D ---- JUDGMENT OF UNITED STATES DISTRICT COURT IN CIVIL CASE NO. CIV. 5-96-1693-DFL-PAN FILED FEBRUARY 7, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

JOSEPH MOHAMED, SR.
AND SHIRLEY MOHAMED, CIV-S-96-1623 DFL PAN

VS

UNITED STATES OF AMERICA,

XX __ Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF FEBRUARY 7, 1997.

Jack L. Wagner.
Clerk of the Court

ENTERED: February 7, 1997

by:/s/ G Hiyaato
G Hiyaato,Deputy Clerk

EXHIBIT E ---- ORDER OF UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING FILED JANUARY 19, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH MOHAMED, SR.
AND SHIRLEY MOHAMED, No. 97-15358

Plaintiffs-Appellants D.C.No.CIV-S-96-1623-DFL

vs

ORDER

UNITED STATES OF AMERICA

Defendant-Appellee
_____/

Before: WOOD*, HALL, and O'SCANNLAIN, Circuit Judges.

Appellants' petition for rehearing having been carefully reviewed by the Court is DENIED.

_____

* The Honorable Harlington Wood, Jr., United States Circuit Judge for the Seventh Circuit, sitting by designation.

EXHIBIT F ---- 28 USC 1346(b)

28 USC 1346(b)

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the laws of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title."

EXHIBIT G ---- BANKRUPTCY CODE 11 USC, SECTION 105

Section 105 - Power of Court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This sub-section shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, may —

(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

(2) Unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that —

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement; may be combined with the hearing on confirmation of the plan."